

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, DECEMBER 14, 2004

The Council of the City of San José convened in regular session at 9:00 a.m. in the Mayor's Conference Room 600, at City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - Gregory. (Excused)

Upon motion unanimously adopted, Council recessed at 9:01 a.m. to a Closed Session in Room 600, (A) to confer with Legal Counsel with respect to existing litigation pursuant to Government Code Section 54956.9 subsection (a) to consider the cases of (1) In re Blean; (2) Proposition 22 Legal Defense and Education Fund, et al. v. Gonzales, et al.; (3) San José Mercury News, Inc. v. City of San José, et al. (B) To confer with Legal Counsel to discuss anticipated litigation pursuant to subsection (b) 54956.9 in one matter. (C) Conference with Labor Negotiator pursuant to Government Code Section 54957.6, City Negotiator: City Manager designee Alex Gurza, and the following Employee Organizations: (1) San José Police Officers' Association; (2) International Association of Firefighters; (3) Municipal Employees Federation; (4) Confidential Employees Organization; (5) City Association of Management Personnel; (6) Association of Maintenance Supervisory Personnel; (7) Operating Engineers, Local 3; (8) International Brotherhood of Electrical Workers; (9) Association of Building and Mechanical and Electrical Inspectors; (10) Association of Engineers and Architects; (11) International Federation of Professional and Technical Employees, Local 21.

By unanimous consent, Council reconvened from the Closed Session and recessed at 9:35 a.m. and reconvened at 10.10 a.m. to a Special Meeting in the Council Chambers.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - Gregory. (Excused)

ORDERS OF THE DAY

Council Member LeZotte requested that the Council defer Item 7.2 (Norcal) until, at least, the first meeting in January 2005 for the following reasons: (1) The Council memorandum was distributed late and the Council and public need more time to review it; (2) The City Auditor did not have a chance to review the numbers in the report; and (3) No public outreach was done. Debate ensued and a subsequent motion to defer was made by Council Member LeZotte, seconded by Council Member Reed, and failed to pass (3-7-0-1. Ayes: Cortese, LeZotte, Reed); Noes: Campos, Chavez, Chirco, Dando, Gonzales, Williams and Yeager. Absent: Gregory.)

ORDERS OF THE DAY (Cont'd.)

Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the Orders of the Day, and the Amended Agenda were approved, with Item 7.2 to be heard. (10-0-1. Absent: Gregory.)

CONSENT CALENDAR

Upon motion by Vice Mayor Dando, seconded by Council Member Yeager and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Gregory.)

2.2 Final adoption of ordinances:

- (a) **ORD. NO. 27303 - Granting a Commercial Solid Waste and Recyclables Collection Franchise to San José Conservation Corps.**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on January 11, 2005, submitted by the City Clerk.

Action: Ordinance No. 27303 was adopted. (10-0-1. Absent: Gregory.)

- (b) **ORD. NO. 27307 – Rezones certain real properties situated in the Five Wounds-Brookwood Terrace Strong Neighborhood Initiative Area and generally bounded by East Santa Clara Street to the North 30th Street to the East, San Antonio Street and William Street to the South, and South 22nd Street to the West from LI Light Industrial and CP Pedestrian Commercial to CP Pedestrian Commercial and to R-2 Two-Family Residence Zoning Districts, all as more specifically described herein. C 04-039**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on December 10, 2004, submitted by the City Clerk.

Action: Ordinance No. 27307 was adopted. (10-0-1. Absent: Gregory.)

- (c) **ORD. NO. 27308 – Rezones certain real property situated at the southwest corner of west Hedding Street and Coleman Street (879 Coleman Ave.) to A(PD) Planned Development Zoning District. PDC 04-053**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on December 10, 2004, submitted by the City Clerk.

Action: Ordinance No. 27308 was adopted. (10-0-1. Absent: Gregory.)

- 2.2 (d) **ORD. NO. 27309 – Rezones certain real property situated at the south side of San Antonio Street, approximately 27- feet easterly of King Road to A(PD) Planned Development Zoning District. PDC 04-052**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on December 10, 2004, submitted by the City Clerk.

Action: Ordinance No. 27309 was adopted. (10-0-1. Absent: Gregory.)

- 2.3 ***Acceptance of the Office of the City Auditor’s Report on Sales Tax Audit Results for the Quarter Ended September 30, 2004. (City Auditor)***

Documents Filed: Report on Sales Tax Audit Results for the Quarter Ended September 30, 2004.

Action: The report was accepted. (10-0-1. Absent: Gregory.)

- 2.4 **Adoption of a resolution authorizing the City Attorney to negotiate and execute a Continuation Agreement with Miller & Van Eaton, L.L.P. for consultant services related to cable television franchise renewal matters, extending the term through December 1, 2005, and increasing the amount of total compensation by \$200,000, to a total amount not to exceed \$575,000. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated December 8, 2004, recommending adoption of a resolution.

Action: Resolution No. 72428, entitled: “A Resolution of the Council of the City of San José Authorizing the City Attorney to Negotiate and Execute a Continuation Agreement with Miller and Van Eaton, L.L.P.”, was adopted. (10-0-1. Absent: Gregory.)

- 2.5 **Adoption of appropriation ordinance and funding sources resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund) for the Mayfair Streetlights Project (PSM 359#2) and the Traffic Communication at McLaughlin Avenue Project (PSM 389) with a net impact to the fund of \$60,819. CEQA: Not a Project. Council Districts 5 and 7. SNI: Mayfair, Tully/Senter. (City Manager’s Office)**

Documents Filed: Memorandum from Budget Director Larry Lisenbee, dated November 22, 2004, recommending adoption of appropriation ordinance and funding sources resolution amendments.

2.5 (Cont'd.)

Action: Ordinance No. 27312, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27196 to Appropriate Monies in the Services for Redevelopment Capital Projects Fund for the Mayfair Streetlights and Traffic Communication at McLaughlin Avenue Projects; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 72429, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72189 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2004-2005 to Adjust Revenues in the Services for Redevelopment Capital Projects Fund", were adopted. (10-0-1. Absent: Gregory.)

- 2.6 (a) **Adoption of appropriation ordinance and funding sources resolution amendments in the Services for Redevelopment Capital Projects Fund (City-Side Redevelopment Fund) for the Gateway East Sanitary Sewer Improvements Project (PSM 387) with a net impact to the fund of \$350,000.**
- (b) **Adoption of a resolution making certain determinations regarding the related expenditures of Redevelopment Agency funds on certain public improvements in connection with the Gateway East Sanitary Sewer Improvements Project, as more specifically described in the memorandum from the Redevelopment Agency, dated October 13, 2004.**

CEQA: Not a Project. Council District 5. SNI: Gateway East. (City Manager's Office)

Documents Filed: (1) Memorandum from Budget Director Larry Lisenbee, dated November 22, 2004, recommending adoption of appropriation ordinance and funding sources resolution amendments. (2) Supplemental memorandum from Assistant to the City Manager Deanna Santana, dated December 10, 2004, transmitting information regarding PSM for the Gateway East Neighborhood.

Action: Ordinance No. 27313, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27196 to Appropriate Monies in the Services for Redevelopment Capital Projects Fund for the Gateway East Sanitary Sewer Improvements Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 72430, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72189 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2004-2005 to Adjust Revenues in the Services for Redevelopment Capital Projects Fund"; and Resolution No. 72431, entitled: "A Resolution of the Council of the City of San José Making Certain Determinations Regarding the Expenditure of Redevelopment Agency Funds for Certain Public Improvements in the Gateway East Neighborhood in the Strong Neighborhoods Initiative Redevelopment Project Area", were adopted. (10-0-1. Absent: Gregory.)

- 2.7 Approval of the sixth amendment to the consultant agreement with GLS Research for public outreach to multi-family properties for the Recycle Plus Program, to extend the term of service by six months from December 31, 2004 to June 30, 2005, at no additional cost to the City for support outreach to multi-family dwelling property managers and residents. CEQA: Not a Project. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services Carl Mosher, dated November 22, 2004, recommending approval of the sixth amendment.

Action: The sixth amendment to the consultant agreement was approved. (10-0-1. Absent: Gregory.)

- 2.8 Approval of a third amendment to the agreement with Camp Dresser & McKee, Inc., for consultant services in connection with the solid disposal agreement with International Disposal Corporation, increasing the compensation by \$50,000, for a total not to exceed \$150,000, and extending the term of the agreement by twelve months from January 1, 2005 to December 31, 2005. CEQA: Not a Project. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services Carl Mosher, dated November 22, 2004, recommending approval of a third amendment to the agreement. (2) Supplemental memorandum from Director of Environmental Services Carl Mosher, dated December 13, 2004, providing a factual correction of information.

Action: The third amendment to the agreement was approved. (10-0-1. Absent: Gregory.)

- 2.9 Adoption of a resolution authorizing the City Manager to execute a project approval form pursuant to the FY 2004-05 Master Agreement between the City of San José and the San José Conservation Corps (SJCC) to carry out community improvement activities for the collection and maintenance of approximately 800 Public Litter Cans for the period November 1, 2004 through June 30, 2005 for a not to exceed amount of \$100,000. CEQA: Negative Declaration and Addenda thereto, PP92-05-098 and PP04-278. (Environmental Services)**

Documents Filed: Memorandum from Deputy Director Environmental Services Frances McVey, dated November 22, 2004, recommending adoption of a resolution.

Action: Resolution No. 72432, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute a Project Approval Form Under the 2004-2005 Master Agreement with the San José Conservation Corps for the Collection and Maintenance of Public Litter Cans", was adopted. (10-0-1. Absent: Gregory.)

- 2.10 Adoption of a resolution authorizing the City Manager to execute a continuation agreement for consultant services between the City of San José and Brown and Caldwell, subject to the concurrence of the Treatment Plant Advisory Committee, to continue the term of the agreement for two years from December 31, 2004 to December 31, 2006, and allow an increase in the consultant's hourly rates, at no additional cost to the City. CEQA: Resolution No. 64667. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services Carl Mosher, dated November 22, 2004, recommending adoption of a resolution. (2) Letter from the Treatment Plant Advisory Committee, dated January 13, 2005, stating concurrence with the Staff recommendation.

Action: Resolution No. 72433, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute a Continuation Agreement for Consultant Services with Brown and Caldwell to Extend Consultant Services Through December 31, 2006, and to Modify the Hourly Rates of Compensation", was adopted. (10-0-1. Absent: Gregory.)

- 2.11 Adoption of a resolution authorizing the City Manager to execute the continuation agreement for consultant services between the City of San José and Raines, Melton & Carella, Inc. (RMC), subject to the concurrence of the Treatment Plant Advisory Committee (TPAC), to extend the term of the agreement for two years from December 31, 2004 to December 31, 2006 and allow increase in the consultant's hourly rates, at no additional cost to the City. CEQA: Not a Project. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services Carl Mosher, dated November 22, 2004, recommending adoption of a resolution. (2) Letter from the Treatment Plant Advisory Committee, dated January 13, 2005, stating concurrence with the Staff recommendation.

Action: Resolution No. 72434, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute a Continuation Agreement for Consultant Services with Raines, Melton & Carella, Inc. to Extend Consulting Services Through December 31, 2006, and to Modify the Hourly Rates of Compensation", was adopted. (10-0-1. Absent: Gregory.)

- 2.12 Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 2004-2005 #6 and authorization for the Director of General Services to execute the purchase orders. CEQA: See memo for CEQA designation(s). (General Services)**

Documents Filed: Memorandum from Acting Director of General Services Jim McBride, dated November 22, 2004, recommending approval of open purchase orders.

Action: The award of open purchase orders for FY 2004-2005 #6 was approved. (10-0-1. Absent: Gregory.)

2.13 Adoption of a resolution authorizing the Director of General Services to execute a Memorandum of Agreement with Motorola C & E, Inc. regarding the exchange of 888 Motorola portable radios. CEQA: Not a Project. (General Services)

Documents Filed: Memorandum from Acting Director of General Services Jim McBride, dated November 22, 2004, recommending adoption of a resolution.

Action: Resolution No. 72435, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of General Services to Execute a Memorandum of Agreement with Motorola C&E, Inc.", was adopted. (10-0-1. Absent: Gregory.)

2.14 Approval of an amendment to the lease between the City of San José and Hawgs Seafood Bar for Tenant's use of 5,070 sq. ft. of retail space adjacent to the Susan and Phil Hammer Theatre at 150 Paseo de San Antonio changing the Landlord under said agreement from the Redevelopment Agency of the City of San José to the City of San José and reducing the monthly base rent from \$9,695.22 to \$4,000 and restructuring the percentage rent so that it applies to those revenues in excess of \$100,000 per month. Council District 3. CEQA: Not a Project. (General Services)

Documents Filed: Memorandum from Acting Director of General Services Jim McBride, dated November 22, 2004, recommending approval of an amendment to the lease.

Discussion: Council Member Cortese noted that the rent has not been paid since May 2004, and asked if the back rent would be waived or paid. Acting Director General Services Jim McBride replied that the tenant is to pay the back rent.

Action: Upon motion by Council Member Cortese, seconded by Council Member Williams, the amendment to the lease was approved. (10-0-1. Absent: Gregory.)

2.15 Approval of an amendment to the lease between the City of San José and Shell Oil Company/Equilon Enterprises LLP for use of City-owned land on the northwest corner of the intersection of Story and King Roads, to extend the term of the lease by an additional five years, to reduce the area being leased by approximately 870 sq. ft., and to increase the rent from \$5,604.00 to \$6,000 per month. Council District 5. CEQA: Mitigated Negative Declaration, CP03-030. (General Services)

Documents Filed: Memorandum from Acting Director of General Services Jim McBride, dated November 22, 2004, recommending approval of an amendment to the lease.

Action: The amendment to the lease was approved. (10-0-1. Absent: Gregory.)

2.16 Adoption of a resolution authorizing the Director of General Services to negotiate and execute an agreement with Medtronic Incorporated for the maintenance and support of existing Lifepak 12 and Lifepak 500 Cardiac Monitors (defibrillators) in an amount not to exceed \$170,256. CEQA: Not a Project. (General Services)

Documents Filed: Memorandum from Acting Director of General Services Jim McBride, dated November 30, 2004, recommending adoption of the resolution.

Action: Resolution No. 72436, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of General Services to Negotiate and Execute an Agreement with Medtronic Incorporated", was adopted. (10-0-1. Absent: Gregory.)

2.17 Adoption of a resolution authorizing the Director of Housing to negotiate and execute:

- (a) **Amendments to the *HomeVenture Fund* grant agreement with Neighborhood Housing Services Silicon Valley (NHSSV) to:**
 - (1) **Reduce the maximum City contribution from \$5,200,000 to \$4,900,000.**
 - (2) **Permit \$350,000 of the proposed remaining \$4,900,000 of *HomeVenture Fund* to be utilized for Homeownership Center operations.**
 - (b) **An agreement, in an amount not to exceed \$30,000, with NHSSV for reservation of American Dream Downpayment Initiative (ADDI) funds, which includes assistance in marketing of the program, the qualifying and selection of the borrowers, and the processing of the City loans.**
 - (c) **Authorizing the Director of Housing to execute all necessary documents.**
- CEQA: Not a Project. (Housing)**

Documents Filed: Memorandum from Director of Housing Leslye Corsiglia, dated November 24, 2004, recommending adoption of resolution.

Action: Resolution No. 72437, entitled: "A Resolution of the Council of the City of San José (A) Authorizing the Director of Housing to Negotiate and Execute Amendments to the Home Venture Fund Grant Agreement with Neighborhood Housing Services Silicon Valley (NHSSV) to: (1) Reduce the Maximum City Contribution from \$5,200,000 to \$4,900,000; (2) Permit \$350,000 of the Proposed Remaining \$4,900,000 of Home Venture Funds to be Utilized for Homeownership Center Operations; (B) Authorizing the Director of Housing to Negotiate and Execute an Agreement, Not to Exceed \$30,000, with NHSSV for Reservation of American Dream Downpayment Initiative Funds, Which Includes Assistance in Marketing of the Program, the Qualifying and Selection of the Borrowers and the Processing of the City Loans", was adopted. (10-0-1. Absent: Gregory.)

2.18 Adoption of a resolution authorizing the Director of the Library Department to grant donor recognition in public libraries for periods in excess of one year. CEQA: Not a Project. (Library)

Documents Filed: Memorandum from Library Director Jane Light, dated November 22, 2004, recommending adoption of a resolution.

Action: Resolution No. 72438, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Library Services to Grant Donor Recognition for Periods in Excess of One Year", was adopted. (10-0-1. Absent: Gregory.)

2.19 (a) Adoption of the following appropriation ordinance amendments in the Park Trust Fund:

- (1) Establish an appropriation in the amount of \$203,000 to the Department of Parks, Recreation and Neighborhood Services for the Flickinger Park Improvements project;**
- (2) Decrease the Reserve: Future PDO/PIO Projects in the Park Trust Fund by \$203,000;**

(b) Adoption of a resolution authorizing the City Manager to negotiate and execute a First Amendment to the Parkland Agreement for Tentative Map No. PT 03-051, between the City of San José and Pulte Home Corporation, to add a City contribution to complete the sports field improvements on the parksite in an amount not to exceed \$145,800.

(c) Accept this memorandum as the completed response to the Council referral relating to the use of the sports field at Flickinger Park.

CEQA: Mitigated Negative Declaration, PDC 03-038. Council District 4. (Parks, Recreation and Neighborhood Services/City Manager's Office)

Documents Filed: Memorandum from Budget Director Larry Lisenbee, and Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated November 22, 2004, recommending adoption of appropriation ordinance amendments.

Discussion: Council Member Reed requested the use of sod in lieu of seed in order for the grass to be in place before the Little League Season begins. Deputy Director of Parks, Recreation and Neighborhood Services Scott Reese noted that Pulte Home Corporation is cooperative and would be able to use sod.

Action: Upon motion by Council Member Reed, seconded by Council Member Chavez, and carried unanimously, Ordinance No. 27314, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27196 to Appropriate Monies in the Subdivision Park Trust Fund for the Flickinger Park Improvements Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 72439, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a First Amendment to the Parkland Agreement for Tentative Map No. PT-03-051 with Pulte Home Corporation for Sports Field Improvements at Flickinger Park", was adopted, and the memorandum was accepted. (10-0-1. Absent: Gregory.)

- 2.20 Adoption of a resolution authorizing the City Manager to negotiate and execute grant agreements with the service providers implementing the third year of the Blueprint Implementation Pilot Program-the School Community Innovation and Cooperation Program, for a total amount not to exceed \$325,000. CEQA: Not a Project. Council Districts 3 and 8. SNI: Washington/Five Wounds/Brookwood Terrace. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated November 22, 2004, recommending adoption of a resolution.

Action: Resolution No. 72440, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Grant Agreements with Service Providers Implementing the Third Year of the School Community Innovation and Cooperation Program in an Amount Not To Exceed \$325,000”, was adopted. (10-0-1. Absent: Gregory.)

- 2.21 (a) Adoption of a resolution authorizing the City Manager to negotiate and execute an extension of the Operations and Maintenance Agreement between San José Golf, L.L.C. and the City of San José for operations and maintenance of Rancho del Pueblo Golf Course for a term of up to 24 months, with the fixed management fee of \$17,729.42 per month; and**
(b) Adoption of appropriation ordinance and funding sources resolution amendments in the Municipal Golf Course Fund as follows:
(1) Increase the Operating Expenses appropriation by \$80,142; and
(2) Increase the Earned Revenue estimate by \$80,142.
CEQA: Not a Project. Council District 5. SNI: East Valley/680 Communities. (Parks, Recreation and Neighborhood Services/City Manager's Office)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, and Budget Director Larry Lisenbee, dated November 22, 2004, recommending adoption of the resolution and appropriation ordinance and funding sources resolution.

Discussion: Council Member Campos asked Staff to keep her office informed as the project progresses.

Action: Upon motion by Council Member Campos, seconded by Council Member Chavez, and carried unanimously, Resolution No. 72441, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Extension of the Operations and Maintenance Agreement with San José Golf, LLC for the Operation and Maintenance of Rancho Del Pueblo Golf Course”, Ordinance No. 27315, entitled: “An Ordinance of the City of San José Amending Ordinance No. 27196 to Appropriate Monies in the Municipal Golf Course Fund for the Operating Expenses;

2.21 (Cont'd.)

and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; and Resolution No. 72442, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 72189 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2004-2005 To Adjust Revenues in the Municipal Golf Course Fund”, were adopted, with Staff directed to keep Council apprised of ongoing activities via frequent updates. (10-0-1. Absent: Gregory.)

2.22 (a) Adoption of a resolution authorizing the City Manager to negotiate and execute a First Amendment to the agreement with RBF Consulting for environmental consultant services for the McKean Road Sports Complex, increasing the compensation by \$20,194 to \$314,194.

(1) Adoption of the following appropriation ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #10:

(a) Establish an appropriation in the amount of \$20,194 to the Department of Planning, Building and Code Enforcement for the preparation of the McKean Road Sports Complex EIR; and

(b) Decrease the Ending Fund Balance by \$20,194.

CEQA: Exempt, PP 03-02-057. (Planning, Building and Code Enforcement/City Manager’s Office)

(b) Adoption of a resolution authorizing the City Manager to negotiate and execute a third amendment to the Memorandum of Understanding (MOU) between the City of San José and San José Unified School District (SJUSD) regarding the recreational sports field use of certain property in the South Almaden Urban Reserve, extending the term of the MOU to April 22, 2005 to allow the City to continue to move forward with the negotiation of terms and conditions for the planning, design, development, use and operation of the property associated with the development of the proposed McKean Road Sports Complex play fields. (Parks, Recreation and Neighborhood Services/City Manager’s Office)

(c) Adoption of the following appropriation ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #10:

(a) Increase the McKean Road Youth Sports Complex project by \$550,000.

(b) Decrease the Reserve: Future Park site Acquisition and Development appropriation by \$550,000.

CEQA: McKean Road Sports Complex Final EIR. (City Manager’s Office)

2.22 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, and Budget Director Larry Lisenbee, dated December 9, 2004, recommending adoption of a resolution, and appropriation ordinance amendments. (2) Memorandum from Deputy City Manager Terry Roberts, dated December 13, 2004, recommending adoption of a resolution. (3) Replacement memorandum from Budget Director Larry Lisenbee, dated December 13, 2004, recommending additional allocation, and adoption of appropriation ordinance amendments.

Action: Resolution No. 72443, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a First Amendment to the Agreement with RBF Consulting for Environmental Consultant Services for the McKean Road Sports Complex, Increasing Compensation by \$20,194 for a Total Amount Not To Exceed \$314,194"; Ordinance No. 27316, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27196 to Appropriate Monies in the Council District No. 10 Construction Tax and Property Conveyance Tax Fund for the McKean Road Sports Complex Environmental Impact Report; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 72444, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Third Agreement to the Memorandum of Understanding with San José Unified School District for the Lease of the Caglia Property", and Ordinance No. 27317, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27196 to Appropriate Monies in the Council District No. 10 Construction Tax and Property Conveyance Tax Fund for the McKean Road Youth Sports Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (10-0-1. Absent: Gregory.)

2.24 Adoption of the following amendments to the annual appropriation ordinance and the funding sources resolution in the General Fund (Fund 001) as follows:

- (a) Establish a Citywide appropriation to the Police Department for the Fiscal Year 2004-05 Congressionally Mandated Award in the amount of \$98,948;
- (b) Increase the Earned Revenue Estimate from Federal Government by \$98,948.

CEQA: Not a Project. (Police/City Manager's Office)

Documents Filed: Memorandum from Budget Director Larry Lisenbee, and Police Chief Robert Davis, dated November 22, 2004, recommending adoption of annual appropriation ordinance and funding sources resolution.

Action: Ordinance No. 27318, entitled: "An Ordinance of the City of San José Amending No. 27196 to Appropriate Monies in the General Fund for the Fiscal Year 2004-2005 Congressionally Mandated Award; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 72446, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72189 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2004-2005 to Adjust Revenues in the General Fund", were adopted. (10-0-1. Absent: Gregory.)

2.25 Adoption of a resolution authorizing the City Manager to:

- (a) Execute a consultant agreement with Next Door Solutions to Domestic Violence to provide domestic violence advocacy and after-care services for the initial period of December 1, 2004 through November 30, 2005 in the amount not to exceed \$123,080;**
- (b) Exercise the first one-year option for the period of December 1, 2005 through November 30, 2006 in the amount not to exceed \$149,432 subject to the annual appropriation of funds; and**
- (c) Exercise the second one-year option for the period of December 1, 2006 through November 30, 2007 in the amount not to exceed \$153,915 subject to the annual appropriation of funds.**

CEQA: Not a Project. (Police)

Documents Filed: Memorandum from Police Chief Robert Davis, dated November 22, 2004, recommending adoption of a resolution.

Action: Resolution No. 72447, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute an Agreement with Next Door Solutions to Domestic Violence to provide Domestic Violence Advocacy and After-Care Services and to Approve Renewal Options", was adopted. (10-0-1. Absent: Gregory.)

- 2.26 (a) Report on bids and award of contract for the Avenida Espana Play Lot Addition Project to the lowest responsive bidder, ESR Construction, Inc., in the amount of \$194,187, and approval of a contingency in the amount of \$10,000.**
- (b) Adoption of the following appropriation ordinance and funding sources resolutions amendments in the Council District 2 Construction and Conveyance Tax Fund:**
- (1) Increase the appropriation to the Department of Parks, Recreation and Neighborhood Services for the Avenida Espana Play Lot Addition Project in the amount of \$270,000;**
 - (2) Increase the Earned Revenue estimate by \$240,000;**
 - (3) Decrease the Ending Fund Balance by \$30,000.**

CEQA: Exempt, PP04-03-060. Council District 2. (Public Works/Parks, Recreation and Neighborhood Services/City Manager's Office)

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, dated November 22, 2004, transmitting report on bids. (2) Memorandum from Director of Public Works Katy Allen, Director of Parks, Recreation and Neighborhood Services Sara Hensley, and Budget Director Larry Lisenbee, dated December 9, 2004, transmitting additional information, recommending approval of contract, and adoption of appropriation ordinance and funding sources resolution.

2.26 (Cont'd.)

Action: The contract was approved, Ordinance No. 27319, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27196 to Appropriate Monies in the Council District No. 2 Construction Tax and Property Conveyance Tax Fund for the Avenida Espana Play Lot Addition Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 72448, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72189 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2004-2005 to Adjust Revenues in the Council District No. 2 Construction Tax and Property Conveyance Tax Fund", were adopted. (10-0-1. Absent: Gregory.)

2.27 Approval of an agreement with BFGC Architects and Planners Inc. for architectural design services for Fire Station No. 25, located near the intersection of Wilson Way and Grand Avenue from the date of execution to March 1, 2007, in the amount of \$309,000. CEQA: Not a Project. Council District 4. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated December 2, 2004, recommending approval of agreement.

Action: The agreement was approved. (10-0-1. Absent: Gregory.)

2.28 Approval of the first amendment to the agreement with Harris and Associates for consultant services for the 84-inch RCP Interceptor and 60-inch Brick Interceptor Phase 6B, extending the term of the agreement from December 31, 2004 to June 30, 2006, with no increase in the amount of the original agreement. CEQA: Exempt, PP 02-05-114. Council District 4. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 30, 2004, recommending approval of the first amendment to the agreement.

Action: The first amendment to the agreement was approved. (10-0-1. Absent: Gregory.)

2.29 Approval of the Operating Grant Agreement with Our City Forest for Fiscal Year 2004-05 in the amount of \$152,000. CEQA: Not a Project. (Transportation)

Documents Filed: Memorandum from Director of Transportation James Helmer, dated November 22, 2004, recommending approval of the grant agreement.

Action: The Operating Grant Agreement was approved. (10-0-1. Absent: Gregory.)

- 2.30 Adoption of appropriation ordinance and funding sources resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund) for the 3rd and 4th Streets Couplet Conversion Phase II Project (PSM 394) with a net impact to the fund of \$1,757,000. CEQA: Negative Declaration and addenda thereto, File No. PP02-05-115 and PP04-293. Council District 3. SNI: 13th Street. (City Manager's Office)
(Rules Committee referral 12/8/04)**

Documents Filed: (1) Memorandum from Budget Director Larry Lisenbee, dated December 8, 2004, transmitting additional information, and recommending adoption of appropriation ordinance and funding sources resolution. (2) Supplemental memorandum from Assistant to the City Manager Deanna Santana, transmitting the PSM for the Couplet Conversion Project.

Action: Ordinance No. 27320, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27196 to Appropriate Monies in the Services for Redevelopment Capital Projects Fund for the Third and Fourth Streets Couplet Conversion Phase II Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption; and Resolution No. 72449, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72189 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2004-2005 to Adjust Revenues in the Services for Redevelopment Capital Projects Fund", were adopted. (10-0-1. Absent: Gregory.)

- 2.31 Approval of Council Appointee salary recommendations. (Mayor) (Rules Committee referral 12/8/04)**

Documents Filed: Memorandum from Mayor Gonzales, dated December 14, 2004, recommending approval of Council Appointee salaries.

Action: The Council Appointee salaries were approved. (10-0-1. Absent: Gregory.)

- 2.32 (a) Approval of additional architectural, engineering and public outreach services for the Almaden Branch Library and Community Center in the amount of \$100,000 to recognize Doris Dillon.**
- (b) Adoption of the following appropriation Ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District 10:**
- (1) Increase the Council District 10 Public Art appropriation by \$100,000.**
- (2) Decrease the Ending Fund Balance by \$100,000.**
- CEQA: Mitigated Negative Declaration PP02-10.309. (Office of Cultural Affairs/City Manager' Office)
(Rules Committee referral 12/8/04)**

2.32 (Cont'd.)

Documents Filed: Memorandum from Deputy Director, Office of Cultural Affairs Jerry Allen, and Budget Director Larry Lisenbee, dated December 9, 2004, recommending approval of additional services and adoption of appropriation ordinance amendments.

Discussion: Vice Mayor Dando requested that \$25,000 of the funding be used for signage, \$75,000 be set aside for the public art piece, and any remaining funds to be used on the Children's Library.

Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously the additional services in the amount of \$100,000 to recognize Doris Dillon Approved was approved, and Ordinance No. 27321, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27196 to Appropriate Monies in the Council District No. 10 Construction Tax and Property Conveyance Tax Fund for the Council District No. 10 Public Art; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted, with Staff directed to keep \$75,000 for the public art piece, and that any remaining funds are to remain in the Children's Library. Staff was further directed to ensure the community is noticed for the (Community) Joint Meeting of the Office of Cultural Affairs (OCA) and the Almaden Branch Library to be held January 2005. (10-0-1. Absent: Gregory.)

2.33 **Acceptance of the Annual progress Report on the Implementation of the Housing Element. CEQA: Not a Project. (Planning, Building and Code Enforcement)** **(Rules Committee referral 12/8/04)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated December 7, 2004, recommending acceptance of the progress report.

Action: The report was accepted. (10-0-1. Absent: Gregory.)

2.34 **Adoption of a resolution approving an agreement for the appointment of Barbara Attard as Independent Police Auditor in accordance with the City Charter, setting the salary of the Independent Police Auditor and authorizing the City Clerk to execute the agreement. (Mayor)** **(Rules Committee referral 12/8/04)**

Documents Filed: Memorandum from Mayor Gonzales, dated December 10, 2004, recommending adoption of a resolution.

Action: Resolution No. 72450, entitled: "A Resolution of the Council of the City of San José Approving an Agreement with Barbara Attard as the Independent Police Auditor of the City of San José", was adopted. (10-0-1. Absent: Gregory.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.2 Report of the Rules Committee – December 1, 2004 Vice Mayor Dando, Chair

Documents Filed: Rules Committee Reports dated December 1, and December 8, 2004.

(a) Redevelopment Agency items reported out at Redevelopment Agency meeting

(b) City Council

(1) Review December 14, 2004 Draft Agenda

The Committee recommended approval of the December 14, 2004 City Council Agenda with two additions.

(2) Add New Items to December 7, 2004 Amended Agenda

The Committee recommended three additions to the December 7, 2004 City Council agenda.

(3) List of Reports Outstanding. Attachment: Report from the City Manager, dated November 30, 2004, transmitting reports outstanding for December 7, 2004.

The Committee noted and filed the City Manager's report.

(c) Legislative Update

(1) State - There was no report.

(2) Federal - There was no report.

(d) Meeting Schedules

(1) January 27, 2004 City Council Ethics Training

(2) January 31, 2004 Budget Study Session

(3) February 15, 2004 Joint City Council/Santa Clara Valley Water District Annual Meeting

(e) The Public Record. Attachment: Memoranda from City Clerk Lee Price, dated November 18, and November 24, 2004, transmitting the items to the Administration and the Public Record for the period November 10-16, 2004, and November 17-23, 2004.

The Committee noted and filed the Public Records.

3.2 Report of the Rules Committee – December 1, 2004 (Cont'd.) Vice Mayor Dando, Chair

- (f) Appointment to Boards, Commissions and Committees. Attachment: Memorandum from City Clerk Lee Price, dated November 23, 2004, recommending waiving Appeals Hearing Board interviews and the reappointment of the three incumbents.

The Committee recommended the reappointment of incumbents Cynthia Cobb, Peter Constant and Kelly Raftery to terms ending December 31, 2007.

- (g) Rules Committee Reviews, Recommendations and Approvals. Attachment: (1) Memorandum from Council Member Campos, dated November 16, 2004, requesting approval of travel. (2) Memorandum from City Clerk Lee Price, dated November 23, 2004, transmitting Mayor and Council approved travel requests. (3) Memorandum from Acting Director of General Services Jim McBride, dated November 23, 2004, transmitting report of notice of surplus utility vehicle and delivery van.

The Committee recommended approval of the travel and use of the Mayor/Council Travel Fund, and the Report of the Notice of Surplus Utility Vehicle and Delivery Van.

- (h) Oral communications - There were none.
- (i) Adjournment - The meeting was adjourned at 2:26 p.m.

Report of the Rules Committee – December 8, 2004 Vice Mayor Dando, Chair

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
 - (1) Review of the December 21, 2004 Draft Agenda
Dropped, due to Holiday Closure.
 - (2) Add New Items to December 14, 2004 Amended Agenda

The Committee recommended nine additions to the December 14, 2004 Amended Agenda.

- (3) List of Reports Outstanding. Attachment: Report from the City Manager, dated December 8, 2004, transmitting reports outstanding for December 14, 2004.

The Committee noted and filed the City Manager's report.

3.2 Report of the Rules Committee – December 8, 2004 (Cont'd.) Vice Mayor Dando, Chair

(c) Legislative Update

(1) State

- (a) 2004 State Legislative Summary. Attachment: Memorandum from Legislative Representative Roxanne Miller, dated December 3, 2004, transmitting 2004 State Legislative Summary.

The Committee accepted the 2004 Legislative Summary.

(2) Federal - There was no report.

(d) Meeting Schedules. Attachment: (1) Memorandum from Mayor Gonzales, dated December 7, 2004, recommending the December 14, 2004 Council Meeting start at 10:00 a.m. (2) Memorandum from Assistant to the City Manager Deanna Santana, dated December 6, 2004, requesting approval of the following meetings.

- (1) January 27, 2004 City Council Ethics Training
(2) January 31, 2004 Budget Study Session
(3) February 15, 2004 Joint City Council/Santa Clara Valley Water District Annual Meeting

The Committee recommended approval of the meetings and study sessions.

(e) The Public Record - There was no Public Record filed.

(f) Appointment to Boards, Commissions and Committees

- (1) Recommendation to Re-Open and Extend Mobile Home Advisory Commission Recruitment. Attachment: Memorandum from Council Member Gregory, dated December 1, 2004, recommending reopening and extending the process for taking applications.

The Committee recommended approval to re-advertise for the neutral representative on the Mobile Home Advisory Commission.

- (2) Appointment to the Community Development Block Grant (CDBG) Committee. Attachment: (1) Memorandum from Council Member Yeager, dated December 3, 2004, recommending Al Munoz be appointed. (2) Memorandum from City Attorney Richard Doyle, dated December 3, 2004, regarding applicant for CDBG Steering Committee.

The Committee recommended appointment of Al Munoz as the District 5 representative on the CDBG Steering Committee for an unexpired term ending June 30, 2007.

3.2 Report of the Rules Committee – December 8, 2004 (Cont'd.) Vice Mayor Dando, Chair

(g) Rules Committee Reviews, Recommendations and Approvals

- (1) Travel Funding Approval. Attachment: Memorandum from Mayor Gonzales, dated November 23, 2004, requested approval for travel.

The Committee recommended approval to fund the Mayor's travel to San Antonio, Texas on October 13-14, 2004 from the Council Travel Fund.

- (2) Fraud Hotline Status Report. Attachment: Memorandum from Director of Employee Relations Alex Gurza, and City Auditor Gerald Silva, dated November 10, 2004, transmitting a status report.

The Committee accepted the status report and noted additional information would be provided in January 2005.

(h) Oral communications

William Chew thanked Chair Pat Dando for her years of service to the City of San José.

- (i) Adjournment - The meeting was adjourned at 2:40 p.m.

Action: Upon motion by Vice Mayor Dando, seconded by Council Member Cortese, the Rules Committee Reports and the actions of December 1, and December 8, 2004, were accepted. (10-0-1. Absent: Gregory.)

3.4 Acceptance of the City Auditor's report, An Audit of the City Manager's Reforms. (City Auditor)

Documents Filed: Report of the City Auditor "An Audit of the City Manager's Reforms", dated December 2004.

Discussion: City Auditor Gerald Silva summarized the report. A short discussion followed with direction as noted in "Action".

Action: Upon motion by Council Member Yeager, seconded by Council Member Chavez, and carried unanimously, the report was accepted, with the City Attorney directed to formalize the findings and standards in the policy as indicated on page 14 and 15 of the report, "What is the Standard for the City Attorney Going Up the Chain of Command"? (10-0-1. Absent: Gregory.)

**3.5 Acceptance of the Findings and Recommendations of the Independent Investigator.
(Independent Investigator)**

Documents Filed: Memorandum from Council Member Cortese, dated December 13, 2004, regarding the Cisco Investigation.

Action: Deferred to January 11, 2005.

- 3.6 (a) Adoption of a resolution extending the enhanced military leave program to City employees who are called to active military duty during the period from January 1, 2003 to December 31, 2005, for reasons related to terrorist attacks or impending or actual armed conflict. (These eligible employees will receive supplemental pay and benefits for the entire time of active duty pursuant to Council action on December 16, 2003.)**
- (b) That, as part of the resolution, the City Council continue to delegate authority to the City Manager or designee to sign agreements with the eligible employees detailing the requirements for those employees who apply to receive the supplementary benefits as outlined in the resolution.**
- (City Manager's Office/Finance)**

Documents Filed: (1) Memorandum from Mayor Gonzales, and Council Member Reed, dated December 13, 2004, recommending approval of the Staff recommendation with additional direction to the City Manager. (2) Memorandum from Vice Mayor Dando, and Council Members Chavez and LeZotte, dated December 8, 2004, recommending approval of the Staff recommendation with additional direction. (3) Memorandum from Director of Employee Relations Alex Gurza, and Director of Finance Scott Johnson, dated December 9, 2004, recommendation adoption of a resolution.

Discussion: Director of Employee Relations Alex Gurza presented the Military Supplemental Pay Calculations. Questions from the Council Members ensued, with direction as noted in "Action".

Action: Upon motion by Council Member Williams, seconded by Vice Mayor Dando, and carried unanimously, Resolution No. 72451, entitled: "A Resolution of the Council of the City of San José Approving the Extension of the Enhanced Military Leave Program to City Employees Who are Called to Active Duty During the Period From January 1, 2003 to December 31, 2005 for Reasons Related to Terrorist Attacks or Impending or Actual Armed Conflict", was adopted, with direction to Staff: (1) Exclude compensation received as an allowance or reimbursement for expenses incurred while on active duty from the calculation of military salary for purposes of determining the amount of supplemental pay. (2) Meet with impacted employees who have returned from active duty and with payroll/finance representatives of military forces to better understand how the City interprets pay stubs received from the military. (3) Develop additional changes to the City' supplemental pay policy, based on the above meetings, to simplify paperwork requirements for City staff and reservists alike. (4) Review the current payroll policy that

3.6 (Cont'd.)

automatically provides 25% of the employee's salary to be paid if the eligible employee's pay stub has not been submitted yet and develop alternatives to better represent the correct amount owed to the employee, with the goal of avoiding paybacks by reservists while still providing bridge pay during transitions. (5) Work with the City's bargaining units to develop a system that will allow members of the Reserves and National Guard who have not been called to active duty to use flex shifts and flex hours so they can better balance their jobs and the demands of military training when not on active duty. (6) Report back to the City Council in a 60 to 90 day timeline, with a review of the recommendations above including an analysis of potential savings or costs associated with these recommendations; and also obtaining customer service feedback from the families as part of this process. (7) Apply the Resolution to all members of the Reserves or National Guard who are called to active duty for more than 30 days for any reason prior to the expiration of the Resolution; and, (8) In order to continue providing military benefits to those reservists who will remain beyond the 26 pay periods, and to those who may be called to active duty in the future, Staff was further directed to extend the military benefits for City employees from December 31, 2004 to December 31, 2005. (10-0-1. Absent: Gregory.)

- 3.7 (a) **Acceptance of the Emergency Communication System Support Fee Status Report.**
(b) **Approval of an ordinance amending Section 8.20.140 of Chapter 8.20 of Title 8 of the San José Municipal Code to clarify that the annual fee cap of \$20,000 per "service Location" applies when one or more parcels of real property are under the common control of a single person or entity, so long as the parcels are contiguous or separated only by public streets or rights of way.**
(City Manager's Office/Finance/Police/Fire)

Documents Filed: Memorandum from Budget Director Larry Lisenbee, Director of Finance Scott Johnson, Chief of Police Robert Davis, and Fire Chief Jeffrey Clet, dated December 6, 2004, recommending acceptance of the report and approval of the ordinance.

Discussion: Questions from the Council Members ensued. Vice Mayor Dando expressed concern regarding another tax and suggested before Council considers making this fee permanent that it goes to the vote of the people. Vice Mayor Dando expressed opposition to the ordinance. Council Member Reed expressed opposition, stating a tax should go to the vote of the community.

Public Comment: Jay Rosenthal, San José Silicon Valley Chamber of Commerce spoke in opposition to the fee.

3.7 (Cont'd.)

Action: Upon motion by Council Member Chavez, seconded by Council Member Yeager and carried, the report was accepted, and Ordinance No. 27322, entitled: "An Ordinance of the City of San José Amending Section 8.20.140 of Chapter 8.20 of Title 8 of the San José Municipal Code to Clarify the Definition of Service Location", was passed for publication, with Staff directed to sample small, medium and large businesses to determine real impacts and bring back actual case studies; and the City Attorney directed to provide more information about the proposed confidentially agreement with SBC. (8-2-1. Noes: Dando, Reed. Absent: Gregory.)

RECESS/RECONVENE

The City Council recessed at 11:53 a.m. from the Special Meeting and reconvened at 1:37 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - Gregory. (Excused)

INVOCATION

Reverend Joseph Leon, Pueblo de Dios Lutheran Church presented the invocation.

PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

CEREMONIAL ITEMS

1.1 Presentation of commendations to the members of the Independent Police Auditor Advisory Committee for their hard work and commitment to the San José community. (Mayor/Independent Police Auditor)

Action: Mayor Gonzales presented commendations to Independent Police Auditor Teresa Guerrero-Daley, and the Advisory Committee for their hard work and dedication to the City of San José.

**1.2 Presentation of Governor's Environmental and Economic Leadership Award, to the City of San Jose for the West Valley Branch Library. (LeZotte)
(Rules Committee referral 12/8/04)**

Action: Mayor Gonzales and Council Member LeZotte invited Pam Crider, Head Librarian, West Valley Library, Domenico Onorato, Associate Architect, and Ned Campbell, to the podium. Mayor Gonzales presented the Governor's Environmental and Economic Leadership Award for Sustainable Facilities to the West Valley Branch Library in recognition of the City of San José's Green Building Program and achievements.

**1.4 Presentation of a commendation to the Silicon Valley/Central Coast Region of the American Cancer Society for its work in eradicating colon cancer from our communities (Dando)
(Rules Committee referral 12/8/04)**

Action: This item was dropped.

SPECIAL CEREMONIALS

Action: Mayor Gonzales recognized Vice Mayor Dando for her leadership and dedication to District 10 and all the residents of San José, upon the ending of her term on the City Council December 31, 2004.

Mayor Gonzales recognized outgoing Independent Police Auditor Teresa Guerrero-Daley for her leadership and dedicated service to the City of San José. Ms. Guerrero-Daley was elected as a Superior Court Judge for the County of Santa Clara.

Mayor Gonzales presented a commendation to Director of Aviation Ralph Tonseth on his retirement for his leadership and dedication to the City of San José for 15 years.

STRATEGIC SUPPORT SERVICES

3.8 Approval of an ordinance adding a new Chapter 14.07 to Title 14 of the San José Municipal Code to set forth procedures for implementing the Charter provision exempting from competitive bidding certain "design-build" contracts for the design and construction of public works. CEQA: Not a Project. (City Manager's Office/Public Works/City Attorney's Office)

Documents Filed: (1) Memorandum from Deputy City Manager Ed Shikata, Director of Public Works Katy Allen, and City Attorney Richard Doyle, dated December 8, 2004, recommending approval of the ordinance. (2) Supplemental memorandum from Director of Public Works Katy Allen, dated December 13, 2004, providing additional information.

3.8 (Cont'd.)

Public Comment: Nancy Ostrowski, AEA, stated the architectural issues and concerns were not addressed. Oliver Baviere, AEA, stated that engineering issues were not addressed. Christopher Dayley, AEA the limitations of ordinance were not consistent to ballot issue. Mary Follenweider, AEA stated the criteria should be clearly defined. Greg Jobe, AEA, stated the ordinance should define a review process, including a code compliance review. Henry Servin, AEA, stated the current implementation ordinance does not speak to the Green policy. Pete Testa, AEA, stated the ordinance does not include a benchmarking provision. Roger Storz, AEA expressed opposition as the ordinance is written currently. Bobby Fishler, League of Women Voters expressed concern about the ordinance.

Neil Struthers, Building Trades Council, stated issues could be addressed in the Request for Proposal, and expressed support for the ordinance.

Action: Upon motion by Council Member Chavez, seconded by Council Member Camps, and carried unanimously, Ordinance No. 27323, entitled: "An Ordinance of the City of San José Adding a New Chapter 14.07 to Title 14 of the San José Municipal Code Specifying the Requirements for Awarding Contracts for the Design and Construction of Public Works Pursuant to the Charter Provision Exempting from Competitive Bidding "Design Build" Contracts Meeting the Requirements Set Forth Therein", was passed for publication. (10-0-1. Absent: Gregory.)

CONSENT CALENDAR

- 2.23 Adoption of a resolution ordering the reorganization of territory designated as Franklin No. 52, which involves the annexation to the City of San José of 3.37 acres of land more or less, located on the north side of Umbarger Road approximately 1,200 feet west of Senter Road and adjacent to the City of San José annexations Franklin Nos. 2, 4, 32, and 44, and the detachment of the same from Central Fire Protection, Area No. 01 (Library Services) County Services, and County Sanitation District 2-3. CEQA: Mitigated Negative Declaration (Pre-zoning File No. PDC04-054). Council District 7. (Planning, Building and Code Enforcement).**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated November 22, 2004, recommending adoption of the resolution.

Action: Upon motion by Council Member Williams, seconded by Council Member Cortese and carried unanimously, Resolution No. 72445, entitled: "A Resolution of the Council of the City of San José Ordering the Reorganization of Certain Uninhabited Territory Designated as Franklin No. 52 Subject to Liability for General Indebtedness of the City", was adopted. (9-0-2. Absent: Dando, Gregory.)

STRATEGIC SUPPORT SERVICES

3.9 Adoption of a resolution approving the annual City of San José Investment Policy including certain revisions thereto. CEQA: Not a Project. (Finance).

Documents Filed: (1) Memorandum from Director of Finance Scott Johnson, dated November 30, 2004, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Finance Scott Johnson, dated December 13, 2004, transmitting additional information.

Discussion: Questions from the Council Members ensued, and a short discussion followed. Council Member Chavez expressed concern that Staff does not have a faster process, and suggested Staff look at bonds at local agencies within the State of California.

Public Comment: William Garbett expressed opposition to the Staff recommendation.

Action: Upon motion by Council Member Williams, seconded by Council Member Reed, and carried, Resolution No. 72452, entitled: "A Resolution of the Council of the City of San José Approving the City's Investment Policy Including Certain Revisions Therefore", adopted. (8-1-2. Noes: Chavez. Absent: Dando, Gregory.)

3.10 Adoption of a resolution authorizing the City Manager to negotiate and execute an amendment to the Loan Agreement ("Agreement") among the American GI Forum of San José ("GI Forum"), the City of San José ("City"), and the County of Santa Clara ("County") to modify terms and extend the maturity date of the loan in the amount of \$4,000,000 to June 30, 2005 with additional options for the City if not paid by that date. CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated December 2, 2004, recommending adoption of a resolution.

Action: Upon motion by Council Member Cortese, seconded by Council Member Chavez, and carried, Resolution No. 72453, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Amendment to the GI Forum Loan Documents to Extend the Repayment of the Loan", was adopted. (7-2-2. Noes: LeZotte, Reed. Absent: Dando, Gregory.)

3.11 Adoption of a resolution:

- (a) Authorizing the Director of General Services to negotiate and execute an Amendment to the Agreement with Scheidt and Bachmann USA, Inc. (S&B) to increase the scope of services to include the purchase of a Parking Access and Revenue Control System (PARCS) for the New City Hall Parking Garage in an amount not to exceed \$250,000 including delivery, installation, training, tax, and the first year of maintenance and warranty; and**
- (b) Finding under Section 3400 of the Public Contracts Code that there is a need for the New City Hall Off-Site Parking Garage Project to match PARCS equipment currently utilized in other City owned downtown parking facilities, and thereby authorizing the Director of Public Works to include a proprietary specification for Scheidt and Bachmann USA, Inc. PARCS in the specifications for the construction of the New City Hall Off-Site Garage.**

CEQA: Not a Project. Council District 3. (General Services/Transportation/Public Works)

Documents Filed: Memorandum from Acting Director of General Services Jim McBride, Director of Transportation James Helmer, and Director of Public Works Katy Allen, dated November 22, 2004, recommending adoption of a resolution.

Public Comment: William Garbett spoke in opposition to the Staff recommendation.

Action: Upon motion by Council Member Chavez, seconded by Council Member Cortese, and carried unanimously, Resolution No. 72454, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of General Services to Negotiate and Execute an Amendment to the Agreement with Scheidt & Bachmann USA, Inc. to Increase the Scope of Services to Include Purchase of a Parking Access and Revenue Control System for the New City Hall Parking Garage in an Amount Not To Exceed \$250,000, including Delivery, Installation, Training, Tax and the First Year of Maintenance and Warranty; and Finding Under Public Contracts Code Section 3400 that there is a Need for the New City Hall Off-Site Parking Garage Project to Match the Parking Access and Revenue Control Equipment Currently Used in Other City Owned Parking Facilities, and Thereby Authorizing the Director of Public Works to Include a Proprietary Specification for Scheidt & Bachmann USA, Inc. Equipment in the Specifications for the Construction of the New City Hall Off-Site Garage”, was adopted. (10-0-1. Absent: Gregory.)

ECONOMIC & NEIGHBORHOOD DEVELOPMENT

4.2 Report of the Driving a Strong Economy Committee – November 29, 2004 Council Member Williams, Chair

Documents Filed: The Driving a Strong Economy Committee Report dated November 29, 2004.

- (a) Economic Development Strategy Update. Attachment: Memorandum from Director of Economic Development Paul Krutko, dated November 8, 2004, transmitting the report.

The Committee accepted the Staff report.

- (b) Proposed Revisions to the Parkland Dedication Ordinance and Park Impact Ordinance. Attachment: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, and Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated November 17, 2004, transmitting the report.

The Committee accepted the Staff report.

- (c) Secondary Units

The Committee accepted Staff's request for deferral to January 24, 2005.

- (d) Oral Petitions

William Garbett, and William Chew spoke.

- (e) Adjournment - The meeting was adjourned at 3:17 p.m.

Action: Upon motion by Council Member Williams, seconded by Council Member Chavez, and carried unanimously, the Driving a Strong Economy Committee Report and the actions of November 29, 2004, were accepted. (10-0-1. Absent: Gregory.)

4.3 Approval to reject all proposals and adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with Light Tower Associates, L.P., otherwise known as the Fairmont Hotel as the exclusive contractor to provide catering management services at the Fourth and San Fernando Streets Parking Garage Banquet Center, for a term of two years, with the option of up to three additional two-year terms at the City's discretion, commencing on or about March 1, 2005, with a fee paid to the City, over the life of the two-year Agreement. CEQA: Not a Project (Economic Development)

4.3 (Cont'd.)

Documents Filed: Memorandum from Director of Economic Development Paul Krutko, dated December 6, 2004, recommending rejection of all proposals and adoption of a resolution.

Action: Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and carried unanimously, Resolution No. 72455, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Light Tower Associates, L.P., for Exclusive Catering Management Services for the Fourth Street Parking Garage Banquet Center", was adopted. (10-0-1. Absent: Gregory.)

4.4 Adoption of a resolution authorizing:

- (a) **The Housing Department to make a loan commitment to the Housing Authority of Santa Clara County, or its designated affiliate or assignee, of up to \$709,000 for rehabilitation of 65 multi-family residential units at 1900 Poco Way; and**
- (b) **An amendment of the Affordability Restriction to increase the number of affordable units by one unit and to extend the effective term to fifty-five years from the completion date of the rehabilitation work.**

CEQA: Exempt, File No. PP04-317. Council District 5. SNI: East Valley/680 Communities. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Corsiglia, dated November 23, 2004, recommending adoption of a resolution.

Action: Upon motion by Council Member Campos, seconded by Council Member Chavez, and carried unanimously, Resolution No. 72456, entitled: "A Resolution of the Council of the City of San José Authorizing the Housing Department (1) To Make a Loan Commitment to the Housing Authority of Santa Clara County, or Its Designed Affiliate or Assignee, of up to \$709,000 for Rehabilitation of 65 Multi-Family Residential Units at 1900 Poco Way and (2) To Make an Amendment to the Affordability Restriction to Increase the Number of Affordable Units by One Unit and To Extend the Effective Term to Fifty-Five Years from the Completion Date of the Rehabilitation Work", was adopted. (10-0-1. Absent: Gregory.)

4.5 Adoption of a resolution:

- (a) **Determining that public use and necessity require the acquisition of a surface parking lot easement on a portion of vacant land owned by Pacific Gas and Electric;**
- (b) **Finding that:**
 - (1) **The property interest to be acquired is necessary for the completion of additional parking spaces for the new Cambrian Library;**

(Item continued on the next page)

- 4.5 (b) (2) The proposed project is planned and located in the manner that will be most compatible with the greatest public good and the least injury to the property owner; (Cont'd.)
- (3) City staff established an amount of just compensation of the full amount of the approved appraisal with an adjustment for relief of maintenance;
- (4) City staff made an offer to the owner for the full appraised amount with an adjustment for relief of maintenance; and
- (5) The proposed taking and use are authorized by law;
- (c) Directing the City Attorney to file an eminent domain action to acquire the above property interest.

CEQA: Exempt, PP04-319. Council District 9. (Public Works/Library)

Documents Filed: None.

Action: Deferred to January 11, 2005.

RECREATION & CULTURAL SERVICES

- 5.2 **Approval of the revised Festival, Parade and Celebration Grant Program Guidelines under City Council Policy 5-2, to be implemented in the 2005-06 grant cycle. CEQA: Not a Project. (Office of Cultural Affairs)**

Documents Filed: Memorandum from Deputy Director, Office of Cultural Affairs Jerry Allen, dated November 22, 2004, recommending approval of the revised Grant Program Guidelines.

Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the Grant Program Guidelines were approved. (10-0-1. Absent: Gregory.)

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 **Adoption of a resolution authorizing the City Manager to execute a second amendment to the agreement between the City and VTA, upon concurrence of the Treatment Plant Advisory Committee (TPAC), to increase the compensation payable by the City to the VTA by \$592,250, from \$1,500,000 to a total not to exceed amount of \$2,092,250 for construction of approximately 1,750 linear feet of 20-inch recycled water pipeline in Coleman Avenue. CEQA: Resolution No. 71448, PP03-02-071. (Environmental Services)**

7.1 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Environmental Services Carl Mosher, dated November 22, 2004, recommending adoption of the resolution. (2) Letter from the Treatment Plant Advisory Committee, dated January 13, 2005, stating concurrence with the Staff recommendation.

Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, Resolution No. 72457, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute a Second Amendment to the Agreement with Santa Clara Valley Transit Authority to Construct Additional Recycled Water Pipeline at Coleman Avenue, in an Additional Amount Not To Exceed \$592,250, for a Total Amount Not To Exceed \$2,092,250", was adopted. (10-0-1. Absent: Gregory.)

7.2 **Approval of a second amendment to the Recycle Plus Integrated Waste Management Services Agreement with Norcal Waste Systems of San José, Inc. (Environmental Services/City Manager's Office/City Attorney's Office)** **CEQA: Not a Project.**

Documents Filed: (1) Memorandum from Deputy City Manager Jim Holgersson, and Director of Environmental Services Carl Mosher, dated December 10, 2004, recommending approval of the Second Amendment to the agreement. (2) Letter from Mark Arsenault, General Manager, South Bay, Waste Management, date December 10, 2004, regarding the Norcal Amendment.

Discussion: A motion to approve the Staff recommendation was made by Council Member Williams, seconded by Council Member Chavez. A lengthy discussion followed.

Deputy City Manager Holgersson responded to questions posed by Vice Mayor Dando about the delay in distributing the Council Memorandum outlining the Staff recommendation. He explained that Staff had only just completed with Norcal its detailed review of payroll records last Friday (December 10, 2004). He added that paychecks were matched against payroll to ensure that the numbers were correct.

Council Member Reed asserted that he would not support the motion for all the reasons he expressed the last time the Council dealt with this issue (appears to be a gift of public funds, promises made to Norcal were not disclosed to the Council, any agreements made with Norcal without Council approval would be in violation of the Charter; and other concerns he outlined in a memorandum to the Council co-signed with Council Member LeZotte on September 20, 2004).

7.2 (Cont'd.)

Council Member LeZotte noted that the Council's direction in September had been to negotiate an amendment to the agreement. She asked Staff what counteroffer was made to Norcal. Deputy City Manager Holgersson reported that Staff went back to review Norcal's payroll and benefits records to determine actual costs, as they related to the negotiated agreement and found that the expenditures were in excess of what was originally estimated by about \$8.4 million. Council Member LeZotte argued that Staff could not verify the numbers, that the City does not owe Norcal a dime and further that the City is not obligated to cover a labor contract.

Environmental Services Director Mosher clarified that Staff's charge, from September until present, was to verify the numbers; not negotiate a different number. Council Member LeZotte voiced strong disagreement. Director Mosher reiterated that Staff sat down with Norcal and California Waste Systems (CWS) in their office and verified payrolls, paychecks and pay stubs; and verified the amount of dollars that transferred from Norcal to CWS for the first two years. He stated that Staff then projected what that would be for the remainder of this year and the remaining two years of the contract. Council Member LeZotte, once again, expressed disagreement.

Council Member LeZotte noted that the Council memorandum indicated that public outreach was not applicable and asked Staff if any public outreach was done before the City negotiated the first contract. Environmental Services Director Mosher replied in the affirmative, reporting that Staff sent out a Request for Proposal, received proposals from a variety of vendors for various recycle services and conducted study sessions. He concluded by stating that Staff has returned to Council with information as directed; and did no public outreach from September to present.

Council Member LeZotte asked if the City Auditor had the opportunity to review any of the documentation. Environmental Services Director Mosher said he had not.

Council Member LeZotte asked why the negotiated settlement is so "front-loaded", especially in a time when the City is facing major budget deficits. Environmental Services Director Mosher explained that the amendment is retroactive; Norcal/CWS had carried the cost of this additional labor expense up to this point and so part of the negotiation was working out the payment that covered both the retroactive, as well as the payments in the future. Council Member LeZotte asserted that she did not recall the Council directing Staff to negotiate retroactive payments. Director Mosher mentioned interest was requested but not agreed to.

Council Member LeZotte stated she wanted to congratulate whoever negotiated this contract for the Teamsters Union because it's probably the best in the State. She emphasized that after all the labor conditions in the contract were value-engineered out in order to win this bid and a contract with the Teamsters was negotiated, she was appalled that Norcal would come back to the Council and ask for the City to pay for it.

7.2 (Cont'd.)

In response to inquiry from Council Member LeZotte, Norcal's representative John Nicholetti stated that Norcal was asked to give consideration to one Union (Local 350) instead of another Union (Longshoremen), which was not how they bid the contract and that required this additional payment. Council Member LeZotte asserted that she had not heard any justification as to why the City should pay Norcal's bills and noted emphatically that she would not support the motion to approve, particularly during these financially difficult times.

Council Member Williams asked Staff if they were sure that the money went to the employees and if so, how was that confirmed. Environmental Services Director Mosher explained that Staff did spot-checks, verifying paychecks to payroll, to confirm what the employees were receiving.

Vice Mayor Dando asked the City Attorney if a related request for public records had been satisfied. City Attorney Doyle reported that the City received more than one and they have all been responded to.

In response to Vice Mayor Dando's question about who made the request to negotiate with Local 350 rather than Longshoremen, Norcal representative Nicholetti said he did not know, but clarified that the negotiations were with the subcontractor, California Waste Solutions, not Norcal. He added that he was not with Norcal during the initial period of negotiations and confirmed, at the request of Council Member Cortese, that he had no personal knowledge of how it came to be that negotiations were with Local 350, as opposed to the Longshoremen.

Vice Mayor Dando commented that the reason she has been supportive of this contract is that it appears to be the most cost effective way for the community to have their garbage picked up. She noted there was something unsettling about it all, however, because there were unanswered questions.

In response to additional questions by Council Member Chavez, Environmental Services Director Mosher explained that the estimated savings for the life of the five-year contract is about \$70 million, that the amount of General Fund money for the account is being reduced and that there will be no General Fund money going into the Recycle Plus Program.

Action: Upon motion by Council Member Williams, seconded by Council Member Chavez, and carried, the second amendment to the Recycle Plus Integrated Waste Management Services Agreement with Norcal Waste Systems of San José, Inc. was approved. (7-3-1. Noes: Cortese, LeZotte, Reed. Absent: Gregory.)

- 7.3 Approval of the third amendment to the agreement with GreenTeam of San José for Recycle Plus Integrated Waste Management Services, to convert the successful compostable pilot program at multi-family properties into a permanent ongoing service, at no additional cost to the City. CEQA: Negative Declaration, PP92-05-98. (Environmental Services)
(Deferred from 12/7/04 – Item 2.3)**

Documents Filed: (1) Memorandum from Director of Environmental Services Carl Mosher, dated November 15, 2004, recommending approval of the third amendment to the agreement. (2) Supplemental memorandum from Director of Environmental Services Carl Mosher, dated December 13, 2004, providing additional clarification.

Action: Upon motion by Council Member Chavez, seconded by Council Member Reed, and carried unanimously, the third amendment to the agreement was approved. (10-0-1. Absent: Gregory.)

AVIATION SERVICES

- 8.1 (a) Adoption of a resolution granting conditional consent to an assignment from San José Jet Center, Inc., to Jet Center Property Services, LLC of the Fixed Base Operator (FBO) Ground Lease of Parcels W-10, W-11 and W-12 at the Norman Y. Mineta San José International Airport.**
- (b) Adoption of a resolution granting conditional consent to a sublease between Jet Center Property Services, LLC and SJJC FBO Services, LLC of a portion of the San José Jet Center premises at the Airport consisting of hangar and tarmac areas for general aviation support and service, including aircraft maintenance and refueling services, overnight parking, and related office use.**
- (c) Adoption of a resolution granting conditional consent to an assignment from San José Jet Center, Inc. to SJJC Airline Services, LLC of the Lease of Airport Premises for office space located at 1455 Airport Boulevard and for ramp space located at 1311 Airport Boulevard.**
- (d) Adoption of a resolution granting conditional consent to an assignment from ACM Aviation, Inc. to SJJC Aviation Services, LLC of the following Agreements:**
- (1) FBO Ground Lease of Parcel 9C at the Airport;**
 - (2) Lease Of Airport Premises for hangar space located at 1475 Airport Boulevard;**
 - (3) Lease Of Airport Premises for employee vehicle parking located at 1455 Airport Boulevard.**

CEQA: Resolution Nos. 67380 and 71451, PP 04-322. (Airport)

Documents Filed: (1) Memorandum from Director of Aviation Ralph Tonseth, dated December 1, 2004, recommending adoption of the resolutions. (2) Supplemental memorandum from Director of Aviation Ralph Tonseth, dated December 8, 2004, providing additional information.

8.1 (Cont'd.)

Action: Upon motion by Council Member Yeager, seconded by Council Member Chavez, and carried unanimously, Resolution No. 72458, entitled: "A Resolution of the Council of the City of San José Granting Conditional Consent to an Assignment from San José Jet Center, Inc. to Jet Center Property Services, LLC of the Fixed Base Operator Ground Lease of Parcels W-10, W-11, and W-12 at the Norman Y. Mineta San José International Airport"; Resolution No. 72459, entitled: "A Resolution of the Council of the City of San José Granting Conditional Consent to a Sublease Between Jet Center Property Services, LLC and SJJC FBO Services, LLC of a Portion of the San José Jet Center Premises at the Airport Consisting of Hangar and Tarmac Areas for General Aviation Support and Service, Including Aircraft Maintenance and Refueling Services, Overnight Parking, and Related Office Use"; Resolution No. 72460, entitled: "A Resolution of the Council of the City of San José Granting Conditional Consent to an Assignment from San José Jet Center, Inc. to SJJC Airline Services, LLC of the Lease of Airport Premises for Office Space Located at 1455 Airport Boulevard and for Ramp Space Located at 1311 Airport Boulevard", and Resolution No. 72461, entitled: "A Resolution of the Council of the City of San José Granting Conditional Consent to an Assignment from ACM Aviation, Inc. to SJJC Aviation Services, LLC of: (1) An FBO Ground Lease of Parcel 9C at the Norman Y. Mineta San José International Airport; (2) A Lease of Airport Premises for Hangar Space Located at 1455 Airport Boulevard; and (3) A Lease of Airport Premises for Employee Vehicle Parking Located at 1455 Airport Boulevard", were adopted. (10-0-1. Absent: Gregory.)

8.2 **Approval of a master agreement with Carter & Burgess, Inc. for architectural consultant services for the Airline Maintenance Facility Project in an amount not to exceed \$750,000, from November 30, 2004 to December 31, 2007. CEQA: Resolution Nos. 67380 and 71451, PP 04-292. (Public Works/Airport)** **(Deferred from 11/30/04 – Item 8.1 and 12/7/04 – Item 8.3)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, and Director of Aviation Ralph Tonseth, dated November 8, 2004, recommending approval of a master agreement.

Action: Upon motion by Council Member Chavez, seconded by Council Member Cortese, and carried unanimously, the master agreement was approved. (10-0-1. Absent: Gregory.)

8.3 **Approval of the following policy direction in the development of the Airport's North Concourse Concession Program:**

- (a) **A single prime operator for the food and beverage element of the North Concourse.**
 - (b) **One or two prime operators for the retail portion of the North Concourse.**
- CEQA: Not a Project. (Airport)**

(Deferred from 11/16/04 – Item 8.1(b) et al, and 12/7/04 – Item 8.4)

8.3 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Aviation Ralph Tonseth, dated November 8, 2004, recommending approval of a minor amendment to the Airport Master Plan. (2) Memorandum from Director of Aviation Ralph Tonseth, and Director of Economic Development Paul Krutko, dated December 8, 2004, recommending approval of the above direction. (3) Supplemental memorandum from Director of Aviation Ralph Tonseth, dated December 10, 2004, transmitting additional information.

Discussion: Questions from the Council Members ensued, and a short discussion followed, with direction to Staff as noted in "Action".

Action: Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and carried unanimously, the policy direction in the development of the Airport's North Concourse Concession Program was approved, with Staff directed to include in the outreach small business associations, including the newly established Almaden Business Association. (10-0-1. Absent: Gregory.)

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
9658	S/W corner Aborn Rd. & Silver Creek Road	7	Barry Swenson Builder	3 Lots	Retail
9630	S/E corner Neal Ave. & Winchester Blvd.	6	American Equity Builders, Inc.	21 Lots	Single Family

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 3:58 p.m.

RECESS/RECONVENE

The City Council recessed at 4:26 p.m. from the Joint City Council/Redevelopment Agency Board, and reconvened at 7:07 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chavez, Cortese, Dando, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - Chirco, Gregory. (Excused)

CEREMONIAL ITEMS

1.3 Presentation of a commendation to the Almaden Youth Association. (Dando) (Rules Committee referral 12/8/04)

Action: Mayor Gonzales and Vice Mayor Dando recognized members Mike Chavez, Dan Smyth, Brad Bosomworth and Jeff Pine, the Almaden Youth Association, for their strong, sustained commitment to provide sports fields to the youth of San José.

1.5 Presentation of a commendation to Reverend Tony Ortiz of California Youth Outreach for winning the California Peace Prize from the California Wellness Foundation. (Cortese) (Orders of the Day)

Action: Mayor Gonzales and Council Member Cortese presented a commendation to Reverend Tony Ortiz in honor of winning the California Peace Prize from the California Wellness Foundation.

PUBLIC HEARINGS

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the below noted continuances were granted. (9-0-2. Absent: Chirco, Gregory.)

11.2 (a) Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning of the property located on the south side of Murphy Avenue, 450 westerly of Ringwood Avenue, from A Agriculture District to A(PD) Planned Development Zoning District to allow single-family detached residential units. (Silicon Valley Habitat for Humanity, Inc., Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2). PDC 04-071 - District 4

(Item continued on the next page)

- 11.2 (b) **Public Hearing on and consideration of adoption of a resolution on Planned Development Permit of the property located on the south side of Murphy Avenue, 450 westerly of Ringwood Avenue, for the construction of three single-family detached residential units. (Silicon Valley Habitat for Humanity, Inc., Owner) CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2).
PD 04-061 - District 4**
- (c) **Public Hearing on and consideration of adoption of a resolution on Planned Tentative Map Permit of the property located on the south side of Murphy Avenue, 450 westerly of Ringwood Avenue, to reconfigure one parcel into three lots for single-family detached residential purposes. (Silicon Valley Habitat for Humanity, Inc., Owner) CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2).
PT 04-081 - District 4**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC04-071, PD04-61, and PT04-081, dated November 29, 2004, recommending approval of an ordinance on the Planned Development Rezoning, and adoption of the resolutions. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated December 9, 2004, transmitting the Planning Commission recommendation. (3) Proofs of Publications of Notices of Public Hearing, executed on December 5 and December 7, 2004 submitted by the City Clerk. (4) Letters from the Public regarding the Planned Development on Murphy Avenue.

Note: Item 11.2 and 11.3 were heard together.

Public Comment: Mayor Gonzales opened the public hearing on the Planned Development Rezoning of the subject property. Bill Bruce and Robert Freiri, for the applicant, Silicon Valley Habitat for Humanity, spoke in favor of the project.

Kwan Low requested a delay in approving the project. Howard Lew expressed concern with the number of additional homes. Liyuan Quan noted potential impacts on existing housing. Jasvin Singh also voiced concern and submitted petitions with 30 signatures of others in with the community, and requested a postponement. Guang Yang expressed concern about the impact to the neighborhood. Charlie Mo stated he had not heard about this project until two days ago and asked for more time for the community to review the project.

Mayor Gonzales closed the public hearing.

Discussion: Council Member Reed requested that Staff assist with effective community outreach efforts before the third parcel comes before Council. Council Member Campos advised the applicant to work with Staff in the District 4 Office.

11.2 (Cont'd.)

Action: Upon motion by Council Member Reed, seconded by Council Member Chavez, and carried unanimously, the recommendation of the Planning Commission, and the Planning Director was approved, and Ordinance No. 27324, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the South Side of Murphy Avenue, 450 Feet Westerly of Ringwood Avenue, from A Agriculture Zoning District to A(PD) Planned Development Zoning District", was passed for publication; Resolution No. 72462, entitled: "A Resolution of the Council of the City of San José Granting, Subject to Conditions, A Planned Development Permit to Use Certain Real Property Described Herein to Allow the Development of Three (3) Single-Family Detached Residences on Individual Lots"; and Resolution No. 72463, entitled: "A Resolution of the Council of the City of San José Granting, Subject to Conditions, A Tentative Map to Use Certain Real Property Described Herein to Allow the Subdivision and Reconfiguration of One Existing Parcels into Three Parcels", were adopted, with the applicant was encouraged to contact Staff in the District 4 Office to assist with effective community outreach efforts before the third parcel comes before Council. (9-0-2. Absent: Chirco, Gregory.)

- 11.3 (a) **Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning of the property located on the southwest corner of Murphy Avenue and Ringwood Avenue, in the A Agriculture Zoning District on a 0.16-acre site to A(PD) Planned Development Zoning District, to allow two single-family detached residential units. (Silicon Valley Habitat for Humanity, Inc., Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2). PDC 04-072 - District 4**
- (b) **Public Hearing on and consideration of adoption of a resolution on Planned Development Permit of the property located on the southwest corner of Murphy Avenue and Ringwood Avenue, in the A Agriculture Zoning District on a 0.16-acre site, to allow the construction of two single-family detached residential units. (Silicon Valley Habitat for Humanity, Inc., Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2). PD 04-062 - District 4**
- (c) **Public Hearing on and consideration of approval of a resolution on Planned Tentative Map of the property located on the southwest corner of Murphy Avenue and Ringwood Avenue, in the A Agriculture Zoning District on a 0.16-acre site, to reconfigure one parcel into two lots for single-family detached residential purposes. (Silicon Valley Habitat for Humanity, Inc., Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2). PT 04-080 - District 4**

11.3 (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC04-072, PD04-62, and PT04-080, dated November 29, 2004, recommending approval of an ordinance on the Planned Development Rezoning, and adoption of resolutions. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated December 9, 2004, transmitting the Planning Commission recommendation. (3) Proofs of Publications of Notices of Public Hearing, executed on November 26, December 5 and December 7, 2004 submitted by the City Clerk.

Note: Item 11.3 and 11.2 were heard together.

Public Comment: See Item 11.2.

Action: Upon motion by Council Member Reed, seconded by Council Member Chavez, and carried unanimously, the recommendation of the Planning Commission, and the Planning Director was approved, and Ordinance No. 27325, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the South East Corner of Murphy Avenue and Ringwood Avenue from A Agriculture Zoning District to A(PD) Planned Development Zoning District", was passed for publication; Resolution No. 72464, entitled: "A Resolution of the Council of the City of San José Granting, Subject to Conditions, A Planned Development Permit to Use Certain Real Property Described Herein to Allow the Development of Two (2) Single-Family Detached Residences on Individual Lots"; and Resolution No. 72465, entitled: "A Resolution of the Council of the City of San José Granting, Subject to Conditions, A Tentative Map to Use Certain Real Property Described Herein to Allow the Subdivision and Reconfiguration of One Existing Parcels into Two Parcels", were adopted. (9-0-2. Absent: Chirco, Gregory.)

11.4 Public Hearing on and consideration of approval of an ordinance and adoption of a resolution on Planned Development Rezoning from R-2 Two-Family Residence Zoning District to A(PD) Planned Development Zoning District to allow 2 existing single-family detached residences and associated Planned Development Permit to Effectuate the proposed rezoning on a 0.23 gross acre site, located at 840 N. 15th Street (Kalbali Ali A., Owner). SNI: 13th Street. CEQA: Exempt. PDC04-044 & PD04-031 - District 3

Documents Filed: None.

Action: Continued to January 25, 2005.

- 11.5 Public Hearing on and consideration of approval of an ordinance on Conforming Planned Development Rezoning from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow minor modifications of the development standards related to front setbacks, noise and soils mitigation for a previously approved 425 unit residential development within the Communications Hill Planned Residential Community (Dairy Hill) on a 60.2 gross acre site, located on the south side of Curtner Avenue approximately 750 feet easterly of Highway 87 (Taylor Woodrow Homes Inc., Owner; Summerhill Construction, Developer). CEQA: Mitigated Negative Declaration, File No. PDC 97-043 and addenda thereto, File No. PDC 04-078. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.
PDC04-078 - District 7**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC04-078, dated November 19, 2004, recommending approval of an ordinance on Conforming Planned Development Rezoning. (2) Proofs of Publications of Notices of Public Hearing, executed on December 5 and December 14, 2004 submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the public hearing on the Planned Development Rezoning of the subject property. There was no testimony from the floor. Mayor Gonzales closed the public hearing.

Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the recommendation of the Planning Director was approved, and Ordinance No. 27326, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated South Side of Curtner Avenue Approximately 750 Feet Easterly of Highway 87 to A(PD) Planned Development Zoning District", was passed for publication. (9-0-2. Absent: Chirco, Gregory.)

- 11.6 Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning from CN Commercial Neighborhood Zoning District to A(PD) Planned Development Zoning District to allow up to four single-family detached residential units on a 0.23 gross acre site, located at the east side of Cypress Avenue approximately 260 feet southerly of Stevens Creek Boulevard (332 South Cypress Avenue) (Mirzadegan Abdy et al, Owner; Abdy Mirzadegan, Developer). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1)
PDC04-046 - District 1**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC04-046, dated November 29, 2004, recommending approval of an ordinance on the Planned Development Rezoning. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated December 2, 2004, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on December 5, 2004 submitted by the City Clerk.

11.6 (Cont'd.)

Public Comment: Mayor Gonzales opened the public hearing on the Planned Development Rezoning of the subject property. There was no testimony from the floor. Mayor Gonzales closed the public hearing.

Action: Upon motion by Council Member LeZotte, seconded by Council Member Chavez, and carried unanimously, the recommendation of the Planning Commission, and the Planning Director was approved, and Ordinance No. 27327, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of Cypress Avenue, Approximately 260 Feet Southerly of Steven Creek Boulevard (332 Cypress Avenue) to A(PD) Planned Development Zoning District", was passed for publication. (9-0-2. Absent: Chirco, Gregory.)

11.7 **Public Hearing on and consideration of approval of an ordinance on Conforming Planned Development Rezoning from A(PD) Planned Development Zoning District which currently allows 501 multi-family and 60 single-family attached units to A(PD) Planned Development Zoning District to allow 501 multi-family attached and 43 single-family detached units on a 11.4 gross acre site, located at 500 Tully Road (Santa Clara County, Owner; Housing Authority of Santa Clara, Roem Development Corporation, Developers). CEQA: Resolution No. 71359. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.**

PDC04-076 – District

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC04-076, dated November 19, 2004, recommending approval of an ordinance on Conforming Planned Development Rezoning. (2) Proofs of Publications of Notices of Public Hearing, executed on December 3 and December 5, 2004 submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the public hearing on the Planned Development Rezoning of the subject property. There was no testimony from the floor. Mayor Gonzales closed the public hearing.

Action: Upon motion by Council Member Chavez, seconded by Council Member Cortese, and carried unanimously, the recommendation of the Planning Director was approved, Ordinance No. 27328, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the South Side of Tully Road Approximately 500 Feet West of Senter Road (500 Tully Road) to A(PD) Planned Development Rezoning District", was passed for publication. (9-0-2. Absent: Chirco, Gregory.)

- 11.9 Public Hearing on and consideration of adoption of a resolution approving a Conservation Area Designation request to designate as a Conservation Area the area approximately bounded by the rear of properties on Balbach Street to the north, the rear of properties on South Market to the East, Highway 280 to the south, and Almaden Avenue to the west on a 10.5 acre site. (Various Owners/City of San José, Applicant). CEQA: Exempt. SNI: Market/Almaden. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).**

CA04-001 - District 3

(Continued from 12/7/04 – Item 11.8)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CA04-001, dated November 4, 2004, recommending adoption of a resolution approving a Conservation Area Designation request. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated December 9, 2004, transmitting the Planning Commission recommendation. (3) Affidavit of Routing executed on January 26, 2005, and Affidavit of Mailing executed January 26, 2005, distributed by the City Clerk. (4) Proofs of Publications of Notices of Public Hearing, executed on November 19, and December 5, 2004 submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the public hearing on the request to designate a Conservation Area Designation. Steven Burbank, Market-Almaden Neighborhood spoke in favor of the Staff recommendation.

Mayor Gonzales closed the public hearing.

Action: Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and carried unanimously, the recommendation of the Planning Commission, and the Planning Director was approved, and Resolution No. 72466, entitled: “A Resolution of the Council of the City of San José Designating, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, the Market-Almaden Conservation Area, Generally Bounded by Rear of Properties on Balbach Street to the North, the Rear of Properties on South Market Street to the East, Highway 280 to the South, and Almaden Avenue to the West, as a Conservation Area with Identifiable Attributes Embodied by (1) Architecture, Urban Design, Development Patterns, Setting or Geography; and (2) History and Directing the City Clerk to Provide Certain Notice of this Resolution”, was adopted. (9-0-2. Absent: Chirco, Gregory.)

GENERAL PLAN PUBLIC HEARINGS

CONTINUATION OF DECEMBER 7, 2004 GENERAL PLAN HEARING

CONSENT CALENDAR

Upon motion by Vice Mayor Dando, seconded by Council Member Chavez and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (9-0-2. Absent: Chirco, Gregory.)

- 12.1 (a) **PUBLIC HEARING ON GENERAL PLAN AMENDMENT** request to change the Land Use/Transportation Diagram designation from Industrial Park with Mixed Industrial Overlay to High Density Residential (25-50 DU/AC) for property located at the southwest corner of North Capitol Avenue and Autumnvale Avenue on a 4.01-acre site. (Autumnvale Associates, Owner/Stephen Carmichael, Applicant).
GP04-04-04 - District 4

Documents Filed: None.

Action: Dropped, to be renoticed.

- (b) **Public Hearing on and consideration of tentative approval of the following items located at the west side of North White Road and 300 feet south of McKee Road (253 & 271 North White Road) on a 1.38-acre site (Ali Kalbali, Owner/Applicant).**

- (1) **PUBLIC HEARING ON GENERAL PLAN AMENDMENT** request to change the Land Use/Transportation Diagram designation from Medium Low Density Residential designation (8 DU/AC) to Neighborhood/ Community Commercial. CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval of Neighborhood/ Community Commercial (7-0-0).

GP04-05-04 - District 5

- (2) **PUBLIC HEARING ON CONVENTIONAL REZONING** from R-1-8 Residential Zoning District to CP Commercial Pedestrian Zoning District to allow commercial/retail uses. CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval of CP Commercial Pedestrian Zoning District to allow commercial/retail uses. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval of CP Commercial Pedestrian Zoning District to allow commercial/retail uses. (7-0-0).

C04-083 - District 5

[Continued from 12/7/04 – Item 12.1(j)]

12.1 (b) (1) & (2) (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C04-083, dated November 17, 2004. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated December 1, 2004, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on October 22, 2004 submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the public hearing of the General Plan amendment request. There was no testimony from the floor. Mayor Gonzales closed the public hearing.

Action: Staff/Planning Commission recommendation was tentatively approved; and Ordinance No. 27329, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated West Side of North White Road, 210 Feet South of McKee Road, to CP Commercial Pedestrian Zoning District", was passed for publication. (9-0-2. Absent: Chirco, Gregory.)

- 11.1 Public Hearing on and consideration of approval of an ordinance on Conventional Rezoning from R-1-8 Residential Zoning District to CP Commercial Pedestrian Zoning District, to allow commercial/ retail uses on a 1.29 gross acre site, located at/on the west side of North White Road, approximately 300 feet south of McKee Road (253 N. White Rd.) (Rumi Group, LLC, Owner). CEQA: Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).**

C04-083 - District 5

(Continued from 12/07/04 – Item 11.3)

Action: Council action taken under 12.1(b)(2).

- 12.1 (c) Public Hearing on and consideration of tentative approval of General Plan amendment request to change the Land Use/Transportation Diagram designation from Industrial Park with Mixed Industrial Overlay to High Density Residential (25-50 DU/AC) for property located on the southeast corner of Senter Road and Needles Drive (1870 and 1888 Senter Road) on a 6.21-acre site. (DDD Partners, Owner/Henry Cord, Applicant). SNI: Tully/ Senter. CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval of High Density Residential (25-50 DU/AC) on a 6.21-acre site (7-0-0).**

GP03-07-09 - District 7

[Continued from 12/7/04 – Item 12.1(k)]

12.1 (c) (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GPC03-07-09, dated November 19, 2004. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated December 1, 2004, transmitting the Planning Commission recommendation.

Public Comment: Mayor Gonzales opened the public hearing of the General Plan amendment request. There was no testimony from the floor. Mayor Gonzales closed the public hearing.

Action: Staff/Planning Commission recommendation was tentatively approved. (9-0-2. Absent: Chirco, Gregory.)

- (d) Public Hearing on and consideration of tentative approval of General Plan amendment request to change the Land Use/Transportation Diagram designation from Industrial Park to General Commercial for property located on the north side of Story Road (915 Story Road) approximately 720 feet southwesterly of McLaughlin Avenue on a 19.59-acre site. (Hewlett-Packard, Owner/Jerry Strangis, Applicant). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval of General Commercial on a 19.59-acre site (7-0-0)**

GP03-07-10 - District 7

[Continued from 12/7/04 – Item 12.1(l)]

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GPC03-07-10, dated November 22, 2004. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated December 1, 2004, transmitting the Planning Commission recommendation.

Public Comment: Mayor Gonzales opened the public hearing of the General Plan amendment request. There was no testimony from the floor. Mayor Gonzales closed the public hearing.

Action: Staff/Planning Commission recommendation was tentatively approved. (9-0-2. Absent: Chirco, Gregory.)

- (e) Heard as Item 12.1(b).**
(f) Heard as Item 12.1(c).
(g) Heard as Item 12.1(d).

- 12.2 Public Hearing on and consideration of tentative approval of General Plan amendment request to change the Land Use/Transportation Diagram designation from Light Industrial to Medium High Density Residential (12-25 DU/AC) for property located at the intersection of Newhall Street and Campbell Avenue (northwest corner) on a 7.8-acre site. (MMAD Investments, Owner/Santa Clara Development Co., Applicant). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement recommends High Density Residential (25-50 DU/AC) and Planning Commission recommends approval of Medium High Density Residential (12-25 DU/AC) (4-2-1; Levy and Zito opposed; Platten absent).
GP04-03-02 - District 3**

Documents Filed: (1) Memorandum from Council Members Chavez and Yeager, dated December 14, 2004, recommending approval of General Plan amendment requests for 12.2 and 12.3. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GPC03-07-10, dated November 22, 2004. (3) Memorandum from Secretary of Planning Commission Stephen Haase, dated December 8, 2004, transmitting the Planning Commission recommendation.

Note: Item 12.2 and 12.3 were heard together.

Public Comment: Mayor Gonzales opened the public hearing of the General Plan amendment request. Mark Robson representing the applicant, Santa Clara Development Company, was available for questions. John Hoskins, Dr. Dunbar, Newhall Neighborhood Association, Vince Cantore, Pulte Home Cooperation, and John Urban spoke in favor of the Staff recommendation. Mara Craggs spoke in opposition.

Mayor Gonzales closed the public hearing.

Action: Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and carried unanimously, the Planning Commission recommendation was tentatively approved, with Staff directed to contact key stakeholders in the area to identify funding sources for and initiate a neighborhood planning effort. (8-1-2. Noes: LeZotte. Absent: Chirco, Gregory.)

- 12.3 Public Hearing on and consideration of tentative approval of General Plan amendment request to change the Land Use/Transportation Diagram designation from Light Industrial to High Density Residential (25-50 DU/AC) for property located at the intersection of Newhall Street and Campbell Avenue (northwest corner) on a 10.2-acre site. (The Gahrahmat Family Limited Partnership, Owner/Pulte Home Corp., Applicant). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval of High Density Residential (25-50 DU/AC) on a 10.2-acre site (4-3-0); Levy, Zito, Pham opposed).
GP04-03-03 - District 3**

12.3 (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GPC04-03-03, dated November 22, 2004. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated December 1, 2004, transmitting the Planning Commission recommendation.

Note: Item 12.2 and 12.3 were heard together.

Public Comment: See Item 12.2 for comments.

Action: See Item 12.2 for action.

- 12.4 (a) **Public Hearing on and consideration of tentative approval of General Plan amendment request to change the Land Use/Transportation Diagram designation from a four-lane Major Collector to a two-lane Major Collector along this segment of South 7th Street. CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval of a General Plan Amendment to redesignate a segment of South 7th Street, from Highway 280 to Keyes Street from Major Collector 4 lanes to Major Collector 2 lanes (7-0-0).**

GP04-03-04 - District 3

- (b) **Public Hearing on and consideration of tentative approval of General Plan text amendment request to change Appendix E of the General Plan Text to be consistent with the amendment to the Land Use/Transportation Diagram. CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval to change Appendix E of the General Plan Text to be consistent with the amendment to the Land Use/Transportation Diagram (7-0-0).**

GPT04-03-04 - District 3

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GPT04-03-04, dated November 18, 2004. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated December 1, 2004, transmitting the Planning Commission recommendation.

Public Comment: Mayor Gonzales opened the public hearing of the General Plan amendment request. There was no testimony from the floor. Mayor Gonzales closed the public hearing.

Action: Upon motion by Council Member Chavez, seconded by Council Member Cortese, and carried unanimously, the Staff/Planning Commission recommendation was tentatively approved. (9-0-2. Absent: Chirco, Gregory.)

- 12.5 Public Hearing on and consideration of tentative approval of General Plan amendment request to change the Land Use/Transportation Diagram designation to remove the Minor Arterial (80-106 foot roadway) designation on Winfield Boulevard from Coleman Road to Almaden Expressway and change this segment of Winfield Boulevard to a local street, and to change the Land Use/Transportation Diagram designation of McAbee Road which forms the west leg of the Almaden Expressway/ Winfield Boulevard intersection, from a four-lane Major Collector to a two-lane Major Collector between Almaden Expressway and Camden Avenue. (City of San José, Owner/Applicant). CEQA: Resolution to be adopted. Director of Planning, Building and Code Enforcement made no recommendation, and Planning Commission recommended approval to change the Land Use/Transportation Diagram designation to remove the Minor Arterial (80-106 foot roadway) designation on Winfield Boulevard from Coleman Road to Almaden Expressway and change this segment of Winfield Boulevard to a local street, and change the Land Use/Transportation Diagram designation of McAbee Road, which forms the west leg of the Almaden Expressway/Winfield Boulevard intersection, from a four-lane Major Collector to a two-lane Major Collector between Almaden Expressway and Camden Avenue.**

GP04-10-02 & GPT04-10-02 - District 10

Documents Filed: (1) Memorandum from Vice Mayor Dando, dated December 13, 2004, recommending approval of additional amendments to the General Plan. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP04-10-02 & GPT04-10-02, dated November 29, 2004. (3) Memorandum from Secretary of Planning Commission Stephen Haase, dated December 1, 2004, transmitting the Planning Commission recommendation.

Public Comment: Mayor Gonzales opened the public hearing of the General Plan amendment request.

Gary Neilsen, Charles Smith, Nancy Wilson, Leslie Smith Monty Dauer, Alex Fraser, Andrew Kubica, John Green, George Bettisworth, Carl Rand and Kathleen Kawakami expressed support for the General Plan amendment.

Tim Donovan expressed concern about traffic congestion. Leo Pursely raised concerns about bridge construction and the safety of the children. Robert Bellizzi also shared issues with traffic concerns.

Mayor Gonzales closed the public hearing.

12.5 (Cont'd.)

Action: Upon motion by Vice Mayor Dando, seconded by Council Member LeZotte, and carried unanimously, the General Plan Amendment was approved, with the bridge deleted from the General Plan, as well as changing a four lane major collector to a two lane major collector, and including, "The Final EIR for this project is identified as significant and unavoidable environmental impact, however, as described in more detail in the proposed resolution of EIR Findings for this project, there is no feasible way to lessen or avoid significant effects and approval of this proposal is anticipated to result in several benefits to our City. All of these project benefits outweigh significant unavoidable environmental impacts identified in the Final EIR", and the Staff/Planning Commission recommendation was tentatively approved. (9-0-2. Absent: Chirco, Gregory.)

12.6 Public Hearing on and consideration of Tentative Approval of General Plan Amendment request to change the Land Use/Transportation Diagram designations from Medium High Density Residential (12-25 DU/AC) on 7.9 acres, Office on 4.7 acres, and Neighborhood/Community Commercial on 4.6 acres to Public/Quasi Public on 17.2 acres. CEQA: Resolution to be adopted. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval for Public/Quasi-Public on 17.2 acres (7-0-0).

GP03-05-10 - District 5

[Continued from 12/7/04 – 12.3(b)]

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP03-05-10, dated October 26, 2004. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated November 15, 2004, transmitting the Planning Commission recommendation. (3) Supplemental memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated December 3, 2004, requesting deferrals of two items to the 12-14-04 and 1-25-05 agendas. (4) Letters from the public in protest regarding the general plan amendment request.

Discussion: Gary Schoennauer, Regional Medical Center responded to questions from the Council Members. Council Member Campos expressed concern regarding the closure of San José Medical Center.

Motion: Council Member Campos moved approval of the General Plan Amendment, and including, "The Final EIR for the General Plan Amendment identified significant and unavoidable environmental impacts. However, as described in more detail in the proposed resolution of EIR Findings for this project, there is no feasible way to lessen or avoid the significant effects and approval of this proposal will be of benefit to our City. All of these project benefits outweigh significant unavoidable environmental impacts identified in the Final EIR". Council Member Williams seconded the motion.

12.6 (Cont'd.)

Public Comment: Mayor Gonzales opened the public hearing.

Bob Taffee, Paula Velsey, and Greg Miller, San José Medical Center Coalition suggested building a new San José Medical Center in the downtown area. Leigh Prince, San José Medical Center Coalition expressed opposition to the closure. Gerald Hunt, San José Medical Center Coalition stated the Closure Impact Study should be approved before the General Plan Amendment. Monica Smith-Braun expressed support of a smaller build-out. Ngoc T-Dang, Les Levitt, and Joy Miller expressed concern for the seniors and patients, and urged the Council to save the hospital. Bob Leininger suggested postponement until January 2005. Rosylin Dean complained that the overriding considerations were not made public. Aurelia Sanchez spoke in opposition to the expansion, and expressed concern with the overall response time to other hospitals. Nancy Hickey asserted that the EIR was legally insufficient. Michael Hundley pointed out that a hospital is needed downtown.

Mayor Gonzales closed the public hearing.

Council Member Chavez remarked that even with the expansion of the Regional Medical Center there will be 200 less beds, one less emergency room. She added this will dramatically effect how the City conducts itself in the case of an emergency because one hospital is lost. She reluctantly expressed support for the General Plan change, and will be scrutinizing the Zoning Process.

Action: On a call for the question, the motion carried unanimously, and the Staff/Planning Commission recommendation was tentatively approved. (9-0-2. Absent: Chirco, Gregory.)

12.7 **Adoption of a resolution approving all General Plan amendment actions taken on December 7 and December 14, 2004 and adoption of CEQA resolutions. (Planning, Building and Code Enforcement)**

Documents Filed: Letter from Shute, Mihaly & Weinberger LLP, Attorneys at Law, dated December 14, 2004, regarding the General Plan Amendment GPT01-10-02.

12.7 (Cont'd.)

Public Comment: Mayor Gonzales opened the public hearing of adoption of a resolution approval all General Plan amendment actions taken on December 7, and December 14, 2004, and adoption of CEQA resolutions.

Mike Chavez, Jeff Pine, Nancy LaScola, Almaden Youth Association, and Carol Hallett spoke in favor of the McKean Sports Center Complex.

Mayor Gonzales closed the public hearing.

Action: Upon motion by Vice Mayor Dando, seconded by Council Member Reed, and carried unanimously, CEQA Resolution No. 72467, entitled: “A Resolution of the Council of the City of San José Making Certain Findings Concerning Impacts and Mitigation Measures Associated with Certain Specific Amendments to the General Plan of the City of San José, For Which the Housing Opportunities Study Phase III General Plan Amendments Environmental Impact Report Has Been Prepared in Accordance with the California Environmental Quality Act”, (see Items 12.1(f)(g)(h) and (i) on the 12-7-04 agenda); CEQA Resolution No. 72468, entitled; “A Resolution of the Council of the City of San José Making Certain Findings Concerning Significant Effects and Alternatives for General Plan Text Amendment File No. GPT01-10-02 (Text Amendment for the McKean Road Sports Complex Project), For Which an Environmental Impact Report Was Prepared in Accordance with the California Environmental Quality Act”, (see Item 12.4 on the 12-7-04 agenda); CEQA Resolution No. 72469, entitled: “A Resolution of the Council of the City of San José Making Certain Findings Concerning Significant Effects and Alternatives for the Winfield Boulevard and McAbee Road General Plan Amendments Project, For Which an Environmental Impact Report Was Prepared in Accordance with the California Environmental Quality Act”, (see Item 12.5 on this agenda); CEQA Resolution No. 72470, entitled: “A Resolution of the Council of the City of San José Making Certain Findings Concerning Mitigation Measures, Adopting a Mitigation Monitoring and Reporting Program, Making Findings Concerning Alternatives, and Adopting a Statement of Overriding Considerations in Accordance with the California Environmental Quality Act for the General Plan Amendment for the Regional Medical Center of San José Hospital Expansion Project For Which an Environmental Impact Report Has Been Prepared”, (see Item 12.6 on this agenda); and Resolution No. 72471, entitled: “A Resolution of the Council of the City of San José Adopting, Pursuant to Title 18 of the San José Municipal Code, Amendments to the San José 2020 General Plan, San José, California”, were adopted, and approving all General Plan amendments. (9-0-2. Absent: Chirco, Gregory.)

ADJOURNMENT

The Council of the City of San José was adjourned in memory of Katherine Boruff, Executive Director of PacSJ and wife of Paul Krutko, Director of Office of Economic Development; and in memory of Dwight "Doc" Near.

The Council of the City of San José was adjourned at 9:13 p.m.

RON GONZALES, MAYOR

ATTEST:

LEE PRICE, CMC, CITY CLERK

smd/12/14/04min